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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 PAUL R. CASTILLO,

12 Plaintiff,

13 v.

14 JOHN SKOBA, et al.,

15 Defendant.

Case No. 10cv1838 BTM

**ORDER DENYING MOTION FOR  
RELIEF FROM ORDER LIFTING  
INJUNCTION ON FORECLOSURE  
SALE**

16 Plaintiff moves for relief from the Court's Order Lifting Restraint on Foreclosure Sale  
17 of his home and seeks reinstatement of this injunction. For the reasons that follow, this  
18 motion is **DENIED**.

19 **I. BACKGROUND**

20 The Court granted Plaintiff's motion for a temporary restraining order to enjoin  
21 foreclosure sale of his home. [Doc. # 14] In order for this injunction to remain in effect,  
22 Plaintiff was required to post monthly security payments of \$2,452.42, representing regular  
23 monthly payments he owes on the property. Soon after, the Court denied Plaintiff's motion  
24 have this requirement to post security payments waived. [Doc. # 21] Because Plaintiff failed  
25 to post any security payments with the Clerk of the Court in compliance with Court order, the  
26 Court vacated the injunction. [Doc. # 37] Plaintiff represents that foreclosure sale is now  
27 scheduled for January 11, 2011.

28 **II. DISCUSSION**

Plaintiff asserts three reasons why the injunction should be reinstated, not

1 withstanding the fact that Plaintiff has failed to post any security payments: (1) Defendants  
 2 lack standing to foreclose; (2) the Court has not commented on all of the arguments raised  
 3 in a forensic examiner's report filed as an exhibit to the second motion for a temporary  
 4 restraining order; and (3) bond is not required because the amount owed is in dispute. None  
 5 of these reasons are persuasive.

6 A. Standing

7 In granting Plaintiff's motion for a temporary restraining order, the Court held that there  
 8 was a likelihood that Plaintiff would succeed on the merits of his claim that neither Aurora nor  
 9 Cal-Western had authority to initiate the foreclosure sale at the time the Notice of Default was  
 10 entered. Specifically, the Court noted that Defendants Aurora and Cal-Western did not  
 11 appear to be the trustee, beneficiary, or an authorized agent at that time. Thus, the Court  
 12 concluded that the Notice of Default appeared to be void *ab initio*, rendering any foreclosure  
 13 sale based on this notice of default also void.

14 In response, Aurora asserts that it was the authorized agent of the lender at the time  
 15 the Notice of Default was entered. [Doc. #22 at 5] It declares that "[p]ursuant to the Master  
 16 Servicing Agreement that Aurora entered into with the lender of the Subject Loan, Aurora is  
 17 authorized to service the loan, and take all actions necessary to enforce and protect the  
 18 lender's rights under the Note and Deed of Trust." (Zimmerman Decl. ¶ 8) Assuming that  
 19 this servicing agreement was in effect at the time the Notice of Default was entered, the  
 20 notice of default would be valid, providing Defendants with standing to foreclose. See Cal.  
 21 Civ. Code § 2924(a)(1); *Beall v. Quality Loan Serv. Corp.*, No. 10-CV-1900, 2010 U.S. Dist.  
 22 LEXIS 96846, at \*3-5 (S.D. Cal. Sept. 16, 2010).<sup>1</sup>

23 Regardless, the Court was aware of the possibility that Defendants would not have  
 24 standing to foreclose when it denied Plaintiff's motion to waive security payments. As noted  
 25 in that order, it is likely that Defendants presently have authority to enter a new Notice of  
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27 <sup>1</sup> Aurora does not attach a copy of this agreement as an exhibit to its filings. Without  
 28 a copy of this agreement, the Court is unwilling to definitively conclude that Aurora was an  
 authorized agent of the mortgagee and thus had authority to enter the Notice of Default at  
 issue in this case.

1 Default, which triggers statutory requirements that eventually lead to foreclosure sale. The  
2 Court required posting of bond because even if the Notice of Default at issue in this case is  
3 void *ab initio*, Defendants would not be permanently precluded from conducting a foreclosure  
4 sale. Then, as now, the Court rejects Plaintiff's attempt to avoid his independent, contractual  
5 obligation to repay his mortgage loan.

6 **B. Forensic Report**

7 Plaintiff contends that the injunction cannot be lifted until the Court addresses  
8 allegations of violations of state and federal law found in a forensic examiner's report  
9 attached to Plaintiff's second motion for a temporary restraining order. Notwithstanding the  
10 fact that many of these allegations are nowhere to be found in the text of Plaintiff's motion,  
11 such allegations are not responsive to the issue of whether the injunction against foreclosure  
12 sale should be reinstated. The Court lifted the injunction because Plaintiff failed to post bond  
13 in compliance with Court order. Plaintiff can point to no state or federal law that would  
14 bestow upon Plaintiff the right to live rent-free. Regardless of the basis for an injunction, the  
15 Court would require payment of bond for the reasons stated in the Order Denying Plaintiff's  
16 Motion for Waiver of Security Payments.

17 **C. Amount Owed**

18 Plaintiff asserts that he should be excused from payment of bond because "the  
19 amount owed is in dispute." Plaintiff was given a mechanism to challenge the amount of  
20 security payment owed each month. (See Doc. # 14 (stating that the Court would entertain  
21 motions to adjust the security payment if \$2,452.42 does not reflect the current monthly  
22 payments that Plaintiff owes on the property)) Plaintiff chose not to utilize this mechanism,  
23 but instead contended that he should be excused, altogether, from the Fed. R. Civ. P. 65(c)  
24 requirement that he must post a security payment. The Court reiterates that payment of  
25 bond was required for the injunction to remain in effect. Plaintiff asserting that the "amount  
26 owed is in dispute" does not relieve him of this obligation.

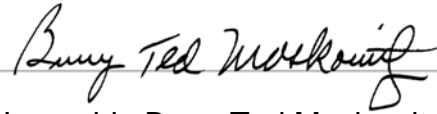
27 **III. CONCLUSION**

28 Therefore, Plaintiff's motion for relief from the Court's Order Lifting Restraint on  
Foreclosure Sale is **DENIED**. The injunction enjoining foreclosure sale of Plaintiff's home

1 remains vacated.

2 **IT IS SO ORDERED.**

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4 DATED: January 7, 2011

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6 Honorable Barry Ted Moskowitz  
7 United States District Judge  
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